



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01719/2016
IA/01720/2016
IA/01721/2016
IA/01722/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 11.10.2018

Decision signed: 11.10.2018
Sent out: 18.10.2018

Before:

UPPER TRIBUNAL JUDGE JOHN FREEMAN

Between:

AMA YEBOAH & 4 OTHERS

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Harshaka Kannangara (counsel instructed by Jade Law)
For the respondent: Mr Steven Walker

DETERMINATION AND REASONS

1. This is an appeal, by the appellants, against the decision of the First-tier Tribunal (Judge Tracey Bowler), sitting at Hatton Cross on 22 August 2017, to dismiss article 8 human rights appeals by the (main) appellant, a citizen of Ghana, born in 1967, and her dependants, against refusal of leave to remain on 15 March 2016. These were her husband, born 1969, and two daughters, C, born in 1998; and M, born here on 10 April 2009.

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*
(2) *persons under 18 are referred to by initials, and must not be further identified.*

2. Permission to appeal was granted by the Upper Tribunal, on a single point identified by the judge as '*Robinson* ([1997] EWCA Civ 3090) obvious'. This turned on the fact that M, by the date of the hearing, though neither by the date of the application nor the decision under appeal, had been in this country for seven years, ever since her birth. It followed that her case could only succeed under article 8, taken with s. 117B (6) of the Nationality, Immigration and Asylum Act 2002. The very well-known authority referred to by the permission judge, understandably briefly, was *MA (Pakistan) & others* [2016] EWCA Civ 705, in particular paragraphs 21 and 78. Paragraph 21 states the general rule in such cases as follows:

The same range of considerations falls to be considered when determining an application under section 117B(6) as in any other article 8 determination. Construing the section in this way, the only relevance of the seven year period is that once a child has been in the UK for that length of time, this is a factor which should be given particular weight when assessing whether it would be reasonable for the child to leave the UK or not.

3. At 48 the judgment (Elias LJ, writing for the court) says this, referring to *EV (Philippines) & others* [2014] EWCA Civ 874:

Although this was not in fact a seven year case, on the wider construction of section 117B(6), the same principles would apply in such a case. However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary.

4. Paragraph 78 deals only with the facts of the individual cases; but 21 and 48 between them set out the general rule. I can now turn to the decision in this appeal. The judge refers to M throughout as 'Appellant 4', but I shall use her initial, since names for children are discouraged in decisions which will be publicly available. At 55 she found that none of the appellants could qualify for leave to remain under the Immigration Rules: this is not, and could not be challenged. That meant she needed to consider whether there were compelling reasons for considering article 8 outside the terms of the Rules: for reasons she gave at 57 – 58, she found there were, and went on to do so.
5. The judge began her consideration at 65 – 73 by weighing up M's best interests. At one point (71) she appears to refer to C, but in view of what followed, she clearly meant M. At her age, her best interests lay mainly in staying with her parents; but the judge went on at 72 – 73 to say this:

However that does not need to be in the UK. There is a functioning education system in Ghana. M is doing well at school in the UK and there is no reason why she would be unable to in Ghana. She is learning German at school and given the support of both of her parents and her basic understanding of Twi, there is no reason why she could not learn that language.

There is no extended family in the UK to support the family. In Ghana M would have the opportunity to develop a relationship with her uncle and potentially further extended family.

6. Then the judge turned to s. 117B (6), and in particular to *MA*. At 78 she made it clear that “... wider public interest considerations only come into play via the concept of reasonableness”. At 79 she went on to say this:

Those wider public interest considerations include, in particular, the need for effective immigration control. M is not to be blamed for her parents’ immigration status or overstaying and given that she has been here for more than 7 years the starting-point is that her status should be legitimized unless there is good reason not to do so. However I should have regard to the wider public interest including the immigration history of [the parents] in assessing the reasonableness of expecting them to leave the UK.

7. The judge considered that immigration history at 80: the mother had overstayed a visit visa since 2000, and the father said he had joined her illegally in 2001 (though there was no documentary evidence of his presence here before 2008, when C was brought in, also illegally. None of them had applied for leave to remain till 2012, and no justification had been put forward for that. The judge went on to take notice of their lack of any criminal convictions against them, and of a letter describing them as hard-working and trustworthy, though as she pointed out, she had not been prepared to accept what they had said about their immigration history.

8. I am not concerned with the judge’s conclusions on the parents or (after further consideration of her personal circumstances) C, except to note that they stand unchallenged. At 84 she gave her general conclusions about M as follows:

Considering the evidence overall and having particular regard to my findings about [the best interests of] M above I find that it would be reasonable to be expected to leave the UK with her parents given the continuing links to Ghana through her parents, the length of time she has been in the UK and the stages of her childhood in which she has been here.

9. However that was not all. At 90 she agreed with Mr Kannangara, who appeared for the appellants then as now, that the key issue was whether M (and C) could reasonably be required to leave this country. Referring to the children, she noted that “Both have spent more than 7 years in the UK and that has been recognized to be a very significant period in immigration control”. After dealing with C, now grown-up, the judge went on at 92 as follows:

M is still young, being only 8 years old. She has not yet moved into secondary school. She is not faced with the challenges of moving during preparation for public exams. She will only be starting to venture much beyond the protection and support of her immediate family and therefore the years she has spent in the UK to date have had less impact in terms of her social and cultural roots than they would do at a later stage. I have concluded that her best interests are served by being with her parents and that those best interests do not require her to be in the UK. I have also found that it is reasonable for her to be expected to leave the UK.

10. Finally at 93 the judge went on to conclude that the decision under appeal was proportionate to the legitimate purpose of immigration control, taking particular account of M’s best interests, and of the ‘considerable weight’ to be given to the fact that she had been here for more than seven years.

11. Mr Kannangara took his stand on the lack of any reference by the judge to the requirement for ‘powerful reasons’ in a case of this kind: he also referred, without being able to cite any particular passage, to *Azimi-Moayed and others* (decisions affecting children; onward appeals) [2013] UKUT (IAC) 197. The relevant part of the judicial head-note is this:
- (1) *The case law of the Upper Tribunal has identified the following principles to assist in the determination of appeals where children are affected by the appealed decisions:*
- i) *As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.*
- ii) *It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.*
- iii) *Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.*
- iv) *Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.*
12. While, as case-law, this has been to some extent overtaken by the changes introduced by the Immigration Act 2014, and by *MA* and other authorities, much of it remains as good common sense. The point Mr Kannangara clearly had in mind was (iii); but (iv) is also of considerable importance in this case, where the seven years spent here by M by the date of the hearing was from her birth.

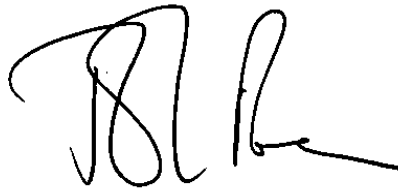
CONCLUSIONS

13. It is noteworthy that what was said in *MA* at 48 (see 3) about ‘powerful reasons’ did no more than set the starting-point for consideration in a case like this. As the Court of Appeal made clear throughout, the final question in every case of this kind, set by Parliament in s. 117B (6), is whether on all the relevant factors, including the child’s best interests, and the interests of the public, it would be reasonable to expect the child to leave this country.
14. It is worth looking briefly at the individual cases dealt with in *MA*: the only one where the judge below, dealing with the appeal on its merits in the Upper Tribunal, appears to have said anything about ‘powerful reasons’ was the one involving three linked Sri Lankan appeals. That decision was upheld; but so was the decision in the lead case, where there was no such reference. The passage cited from the first-tier decision at 67 shows the facts about the child were very similar to those in the present case; and so was the judge’s treatment of them, though perhaps less detailed and methodical than here.
15. While it may well be worth judges referring in terms to the need for ‘powerful reasons’, if only to avoid appeals like this, that can never have been intended by the Court of Appeal

as a magic formula, without which their decisions would crumble to dust. What the judge needed to do in the present case, was to deal with the child's best interests as a primary consideration (which she did: see 5); then to identify the starting-point. This the judge did (see 6), if not in terms of 'powerful reasons'; but her understanding of what the interests of a qualifying child, here for over seven years, required is very well shown by her references to that being a 'very significant period' (see 9), and something to which 'considerable weight' had to be given (see 10).

16. Having done that, the judge needed to go on to consider the reasonableness question as a whole, both in the light of the child's best interests (which she did with great care: see 5 and 9), and of those of the public at large (see 7 – 8). In my view this was an exceptionally well-balanced and careful decision, if anything more painstaking than it need have been in parts, but the judge was fully entitled to find that, despite M's seven years or more here, from birth in this case, her parents' very poor immigration history, though that was not her fault, led to a strong public interest in their removal, and M's best interests were to go to Ghana with them.
17. In general, while the starting-point can never be lost sight of in a case of this kind, it would be wrong to encourage parents of children to expect seven years spent here by any child to be treated as a trump card for the family as a whole. Detailed consideration of the child's individual position will be needed in every case like this, all the more so as a child gets older (see *Azimi-Moayed*). That is what M got from Judge Bowler here.

Appeal dismissed



(a judge of the Upper Tribunal)
11 October 2018